IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/02/2002

CORAM

THE HONOURABLE MR. JUSTICE V. KANAGARAJ

Writ Petition No.15165 of 1998 and Writ Petition No. 15261/1998
and Writ Petition No.15262 of 1998
and
W.M.P.Nos.22892, 23050 and 23052 of 1998

WP No. 15165/1998

V.N.Venkatachala Gounder .. Petitioner

-Vs-

1.The State of Tamilnadu, rep.
By secretary to Govt.
Housing and Urban Development
Department, Chennai-9
2.The Tamilnadu Housing Board,
rep.by its Chairman-cum-Managing
Director, Nandanam,Chennai-35
3.The Special Tahsildar,
Land Acquisition(I)
Housing Scheme,Coimbatore .. Respondents

WP Nos.15261 & 15262/1998

V. Kulandaivelu .. Petitioner

V.N.Venkatachala Gounder .. Petitioner

Vs.

1.The State of Tamilnadu, rep.
By secretary to Govt.
Housing and Urban Development
Department, Chennai-9
2.The Special Tahsildar,
Land Acquisition(I)
Housing Scheme,Coimbatore ..Respondents
(In WP Nos.15261
15262/1998)

Petitions filed under Article 226 of Constitution of India to
Issue a Writ of Certiorari as stated therein.

For Petitioners : Mr. V. Ayyadurai
(In both the Wps.)

For Respondents : Mrs. R. Thenmozhi Sevaperumal
(In both the Wps.) Addl. Govt. Pleader.

:COMMON ORDER

All the above three writ petitions are concerned with the land acquisition proceedings initiated by the Special Tahsildar, Land Acquisition Housing Scheme, Coimbatore-18, who is the third respondent in the first writ petition above in WP No. 15165 of 1998 and the second respondent in the other writ petitions in WP No.15261 and 15262 of 1998.

2. All the above three writ petitions have been filed seeking to issue Writs of Certiorari to call for the records pertaining to the notification made in G.O.Ms.No.495 Housing and Urban Development Department, L.A., dt. 14.11.96 and so far as it is concerned with the first writ petition and the 4 (1) notification in G.O.Ms.No.670, Housing and Urban Development Department, dated 31.7.1995 culminating into Section 6 declaration made in G.O.Ms.No.422, Housing and Urban Development Department dated 26.9.96 so far as it is concerned with the second and third writ petitions above.

3. For easy reference and for the sake of convenience WP Nos. 15165 , 15261 and 15262 of 1998 are hereinafter referred to as the first, second and the third writ petitions respectively. Further more, since all of them are concerned with the land acquisition for one and same purpose of the respondent/ The Tamil Nadu Housing Board, from one and the same area, though under different notifications, they have all been heard together and the following common order is passed.

4. So far as the first of the above writ petitions is concerned, the petitioner therein would pray to quash Section 4 (1) notification made in G.O.Ms.No.495, dated 14.11.96 which pertains to his land to an extent of 0.06.0 hectare in S.No. 8/2B, 1.87.5 hectares in S.No.9/1 and 1.94.0 hectares in S.No. 9/2B of Vellakinar Village which are sought to be acquired in Coimbatore by the respondents. So far as the second and third writ petitions are concerned, it is not only the 4 (1) notification made in G.O.Ms.No.670, dated 31.7.1995 but also the declaration made under section 6 of the land acquisition Act in G.O.Ms.No.422, dated 26.9.96 and the award enquiry pertaining to lands belonging to the petitioner, which are sought to be quashed by the petitioner.

5.From the facts and circumstances as traced in the affidavit filed in support of the writ petitions, it comes to be known that the petitioner in WP No.15165/1998 was the absolute owner of the lands comprised in Survey No.8/2B, measuring an extent of 0.06.0 hectare;S.No. 9/1 measuring an extent of 1.87.5 hectares in S.NO.9/2B measuring 0.60.5 hectare and in

S.No.14/2-C-1 measuring an extent of 0.06.0 Hectares in Vellakinar village of Coimbatore Taluk in total 1.94.0 hectare; that the petitioner in WP No. 15261/1998 was the owner of the land in S.No.14/1-C measuring an extent of 1.87.5 Hectares; that the said lands are cultivable lands and being irrigated by well water; that the petitioners were small farmers and eking their livelihood as agriculturists; that as per the Government Order in G.O.Ms.No.495, dated 14.11.1996, and G.O.Ms.No.670, dated 31-7-1995 the lands belonging to the petitioners were also sought to be acquired for the purpose of Thudiyalur Vallakinar Neighbourhood scheme and the same had been published in the Tamilnadu Government Gazette dated 18.12.1996 and 13 -9-95 respectively; that there was no local publicity; that notices for enquiry under Section 5(A) in Form B dated 6.3.1997 and 7-11-95 were served upon the petitioners stating that the enquiry would be held on 31.3.1997 and 28-11-95; that on the date of enquiry, the petitioners have submitted their objection.

6.It is also stated by the petitioner in the first writ petition that the objections were raised by him contending that there is a family temple in S.No.9/1 and that the said lands are not suitable for housing scheme; that though the third respondent has chosen to issue a notice dated 8.7.1997 calling upon the petitioner to appear for the further enquiry which was to be held on 30.9.1997, no such enquiry had been conducted by the third respondent; that there was no declaration under Section 6 of the Act; that notification under Section 4(1) of the Act dated 14.11.1996 had lapsed for want of issuance of declaration under Section 6 of the Act and therefore, the impugned proceeding is liable to be quashed.

7.It is further stated in WP Nos. 15261 and 15262 of 1998 that the objections filed by the petitioners have not been considered; that no further enquiry was conducted; that declaration under Sec. 6 of the Act was made in

G.O.422, dated 26-9-96 and the same was published in the Gazette dated 27-9-96 and therefore, the impugned proceeding are illegal and they are liable to be quashed.

8. It is relevant to point out that the first and the third writ petitions have been filed by one and the same petitioner pertaining to the acquisition of his lands by the respondents. Both the lands situate in one and the same Village but under different notifications they have been acquired. Though the lands acquired belonging to the second writ petitioner are also from the same village and adjacent to the other two, the notification has been made along with the acquisition of the land concerned with the third writ petition and all the above said lands have been acquired for one and the same purpose i.e. The Tamil Nadu Housing Board Thudiyalur Vellakinar Neighbourhood scheme. The facts and circumstances encircling all the above three writ petitions are one and the same.
9. Though different affidavits have been filed in support of the writ petitions by the petitioners, the allegations are almost one and the same to the effect that the mandatory requirement of Section 4 (1) notification as to the publication of substance of the same in the locality and in the Newspapers have not been followed for the purpose of 5-A enquiry dated 31.3.97, 7.11.95

and 7.11.95 respectively; that there has been a delay on the part of the respondents in conducting the enquiry wherein the petitioners raised various objections which have not been dealt with in accordance with law; that no further enquiry has been conducted by the Special Tahsildar as contemplated by Rule 3 (b) new Rule 4 (a) of the Tamil Nadu Acquisition Rules; that the Special Tahsildar issued a notice for award enquiry without authority of power since there is no proper delegation of authority conferred on the second respondent to perform such functions of the Collector under the Land Acquisition Act as a result of which there was no proper declaration under Section 6 of the Act on the basis of the notification made under Section 4 of the Act.

10. The further contentions of the petitioners are that they are small farmers and that as villagers they had no access to the gazette publication of either 4 (1) notification or Section 6 declaration and that they came to know about the declaration made under Section 6 of the Act only on receipt of the award enquiry notice; that the impugned land acquisition proceedings are violative of Article 3 (1)(a) of the Constitution of India and on such grounds, the learned counsel for the petitioners would pray for the relief extracted supra.

11. No counter has been filed on the part of the respondents in rebuttal of these allegations but yet the learned Additional Government Pleader would appear and argue on instructions imparted on the part of the respondents.

12. During arguments, the learned counsel for the petitioner would submit that in the lands concerned with the first writ petition above, there is a family temple and the lands are not suitable for Housing Scheme; that the objections raised by the petitioners in the second and third writ petitions have not been considered and that no proper declaration was made under Section 6 of the Act in the first writ petition above even though it was made in the other two writ petitions but without further enquiry and therefore, the impugned proceedings in all the above three writ petitions are illegal and they become liable to be quashed.

13. Learned counsel for the petitioners would further argue to the effect that whenever the land is sought to be acquired by the authorities, prior approval of the Government is required under Section 3 (f) (vii)of the Land Acquisition Act and this is not done in these cases. At this juncture, the learned counsel would cite the judgment reported in 2001 (1) C.T.C. 481 (SEMBANNA GOUNDER AND THREE OTHERS - Vs. - STATE OF TAMIL NADU REP. BY THE SECRETARY, URBAN DEVELOPMENT, FORT ST. GEORGE, MADRAS.9 AND TWO OTHERS) wherein it is held that "the prior approval of the Government is mandatory." Learned counsel would further argue that the publication of 4 (1) notification in the Newspapers must have been circulated in the locality; that in the cases in hand no such circulation was made nor any publication effected either in English or in vernacular language. At this juncture, the learned counsel would cite yet another judgment delivered in V. KRISHNAN - Vs.- GOVERNMENT OF TAMIL NADU REP. BY ITS SECRETARY, ADI DRAVIDAR AND TRIBAL WELFARE DEPARTMENT, FORT ST. GEORGE, MADRAS.9 AND TWO OTHERS (2001 (4) C.T.C. 108 (DB) wherein the Division Bench of this court has been held that " the paper publication of

Section 4(1) notification should be published in leading English or Tamil dailies which are in circulation in that locality". The learned counsel for the petitioner would further argue that the award enquiry has been conducted by the Special Tahsildar without any delegation of authority and the very award proceedings initiated by the Special Tahsildar for conducting enquiry under Section 5-A of the Act without delegation of authority or power is bad in law. On such arguments, the learned counsel would pray to grant the reliefs as sought for in the above writ petitions.

14. On the other hand, the learned Additional Government Pleader in her crisp arguments would reveal that in all the above cases the award has been passed; that in the cases relating to second and third writ petitions only after the passing of the award, the petitioners have instituted the writ petitions and therefore, at this stage the writ petitions cannot be entertained; that even in the first writ petition the award was about to be passed and the stay has been granted only regarding dispossession and not otherwise; that the authorities concerned have completed all the other formalities also and it is only the stage of taking possession of the properties and therefore, at this stage when almost the whole acquisition proceedings are over, the petitioners have come forward with these writ petitions seeking to quash the 4 (1) notification and the award passed by the respondents; that the procedures have been thoroughly followed effecting such publications and serving such notices with full opportunity for the petitioners to be heard and moreover, since the lands are required for the public purpose of formation of the neighbourhood scheme in the locality effecting proper publications and making such declarations, the lands have been acquired and this Court had granted the limited stay of dispossession alone , the acquisition proceedings as a whole would have come to a close and therefore, the Additional Government Pleader would contend that there is absolutely no merit in the writ petitions nor any violation of the mandatory provisions of law, and would pray to dismiss all the above writ petitions .

15. In consideration of all the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known is that the Government, on behalf of the Tamil Nadu Housing Board, have issued the 4 (1) notification for the acquisition of the lands mentioned supra respectively belonging to the petitioners for the purpose of Thudiyalur Vellakinar Neighbourhood Scheme of Coimbatore Taluk and District. Though it is argued on the part of the petitioners that the lands sought to be acquired by the Government for the said purpose are cultivable lands and that the petitioners are small farmers doing agriculture for eking out their survival, still when the lands are acquired for the public purpose, the land owners could only seek for proper compensation for which provisions are made under the Act and Rules and that basically time and again it has been held that unless violation of the mandatory provisions of the Act and Rule are established, once the acquisition proceedings are initiated by the Government, it cannot be interfered with for any other purpose. Therefore, the only question that is to be answered in these cases is whether there is such violation of the mandatory provisions of law.

16. As argued on the part of the learned counsel for the petitioner,

no prior approval of the acquisition for the Neighbourhood Scheme, which is mandatory, has been obtained and there is no iota of evidence placed before this Court for such an approval having been obtained from the Government and therefore, within the meaning of the judgment cited from (2001(1)C.T.C.481) non compliance of such observance vitiates the entire acquisition proceedings. Further more, as it is authoritatively held in the Division Bench judgment of this Court cited from 2001 (4) C.T.C. 108 publications of the land acquisition proceedings in leading English and Tamil dailies have not been effected nor any proof placed before this Court for such publications particularly that of the English and vernacular and this is nothing sort of yet another violation of mandatory provision of law and therefore, no mention need be necessary that the entire land acquisition proceeding initiated in all the above matters get vitiated. However, the respondents will be at liberty to commence the proceedings afresh from where the violations of the mandatory provisions of law have taken place.

17. In result,

(i) the above writ petitions succeed and they are allowed.
(ii) the impugned G.O.MS.No.495 Housing and Urban Development Dedpartment, L.A. 3(2) dated 14.11.96, G.O.Ms.No.670 Housing and Urban Dept. L.A. dt. 31.7.95 and G.O.No. 422 Housing and Urban Department (LA 3 -2) dated 26.9.96 are quashed;
(iii) the respondents are at liberty to proceed effecting fresh notification following the mandatory provisions of law;
(iv) No costs;
(v) Consequently, W.M.P.Nos.22892, 23050 and 23052 of 1998 are closed.

Index: Yes.
Internet: Yes.
ra.
To
1.The secretary to Government,
State of Tamilnadu,
Housing and Urban Development
Department, Chennai-9

2.The Chairman-cum-Managing
Director,
Tamilnadu Housing Board,
Nandanam,Chennai-35

3.The Special Tahsildar,
Land Acquisition(I)
Housing Scheme,Coimbatore.

V. KANAGARAJ, J.